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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 38

LOS ANGELES MEAT AND PROVISION DRIVERS UNION, LOCAL 626, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 40–55) is reported at 196 F. Supp. 12.

JURISDICTION

The judgment of the district court was entered on July 14, 1961 (R. 56). A notice of appeal was filed July 26, 1961 (R. 78); a supplementary notice of appeal was filed August 16, 1961; and this Court noted probable jurisdiction on January 15, 1962 (R. 82; 368 U.S. 965). The jurisdiction of this Court rests on Section 2 of the Expediting Act, 32 Stat. 823, as amended, 15 U.S.C. 29.

QUESTIONS PRESENTED

Upon a stipulated record showing admitted violations of the Sherman Act by a Union acting in conjunction with its independent contractor (grease peddler) members, the district court found that (1) the grease peddlers and employee members of the Union were not in competition, (2) there was no relationship between the commercial activity of grease peddlers and the working conditions of employee members of the Union, (3) the grease peddlers joined the Union either to restrain trade or because they were forced to join by the conspirators and (4) "union" affiliation was the means used to effect and camouflage the activities of the unlawful combination and to hold the participants in combination. The court concluded that "the most effective, if not the only, means" of assuring compliance with its decree was to require the Union to expel and exclude the peddlers from its membership.

The following questions are presented:

1. Whether the district court exceeded its power in ordering the Union to expel its peddler members.

2. Whether the court's order requiring the Union to expel all peddler members deprived those members who were not defendants of statutory and contractual rights to membership without a hearing, violation of due process.

STATUTES INVOLVED

The relevant portions of the Sherman Act, 26 Stat. 209, as amended, 15 U.S.C. 1, *et seq.*; the Clayton Act, 38 Stat. 730, as amended, 15 U.S.C. 12, *et seq.*, 29

U.S.C. 52, the Norris-La Guardia Act, 47 Stat. 70, as amended; 29 U.S.C. 101, *et seq.*, and the National Labor Relations Act, 49 Stat. 449, as amended, 29 U.S.C. 151, *et seq.*, are set forth in the Appendix, *infra*, pp. 37–42.

STATEMENT

I. THE COMPLAINT, STIPULATION OF FACTS AND DISTRICT COURT JUDGMENT

The complaint (R. 1–12) filed on May 27, 1959, charged the Los Angeles Meat and Provision Drivers Union, Local 626; Meyer Singer, business representative of Local 626; and Lee Taylor, Hubert Brandt, Walter Klein and Harold Carlis, grease peddler members of a subdivision of Local 626 known as "626–B," with conspiring to restrain foreign trade and commerce in yellow grease, in violation of Section 1 of the Sherman Act. All other peddler members of the Union as well as certain processors of grease were named co-conspirators, but not defendants (R. 3).

According to the complaint, the grease peddlers were engaged in the business of buying restaurant grease from hotels, restaurants and institutions in the Los Angeles area, and reselling to processors in the same area. Processors extracted moisture and solid impurities from the restaurant grease, by various processes, and thereby converted it into yellow grease. A substantial part of the yellow grease so produced was sold to buyers in foreign countries and to buyers in California for prompt shipment to foreign countries (R. 20, Stip. 18).

The complaint charged, *inter alia*, that from October 1954 to May 27, 1959, the grease peddlers and

the Union (and co-conspirator processors) had fixed the prices to be paid by peddlers to their sources of restaurant grease and the prices at which peddlers could sell restaurant grease; had allocated among the peddlers the persons from whom they could buy and to whom they could sell; had required processors to buy only from "Union" peddlers; and had enforced these restraints by boycotts, picketing and strikes and threats thereof.

The defendants filed an answer (R. 12–16) generally denying the allegations of the complaint. Thereafter, the parties agreed to a stipulation of facts (R. 16–35) which included an admission of all the charges in the complaint and the ultimate conclusion that defendants had unlawfully combined and conspired in unreasonable restraint of foreign commerce. The parties further stipulated (1) that there were "no issues of fact remaining to be litigated upon trial"; (2) that the government was entitled to an injunction against the fixing of buying or selling prices, the limiting of the number of peddlers, allocating of peddlers' customers or peddlers' sources for restaurant grease, or allocating of the business of the processors; and (3) that the "sole remaining issue" was whether the court should order the termination of grease peddler membership in the Union, as prayed in the complaint (R. 34–35).

The case was submitted to the district court upon the pleadings and stipulation, and oral argument was had. The court made findings identical to the stipulated facts (R. 56–73) and in a lengthy opinion (R. 40–55) upheld the government's claim that the union should be required to expel the grease peddlers. The

court's judgment, in addition to providing the injunctive relief to which the defendants had consented, also ordered Local 626 to expel from membership all grease peddlers, to refuse membership at any time in the future to any grease peddlers and to expel from membership any member who became a grease peddler (R. 75). The decree defined "grease peddler" as a person who is a "self employed entrepreneur" (R. 74), and the court stated in its opinion (R. 55), that grease peddlers who "became bona-fide employees" may become union members.

II. THE FINDINGS OF THE DISTRICT COURT

A. *The commercial restraints.*

Appellant Union, through its business representative, appellant Singer, and other representatives, offered the grease peddlers a plan to increase their profits by increasing the margin between the prices they paid restaurants, hotels and other institutions for grease and the prices at which they sold to processors (R. 22, Stip. 26).[1] The plan contemplated preventing peddlers from soliciting the accounts of other peddlers, requiring processors to deal only with Union grease peddlers, and forcing out of business any grease peddlers who did not join the Union (*ibid.*).

The plan was carried out. From November 1954 to 1957 Singer set the prices at which the peddlers would sell, and the processors agreed to those prices (R. 24,

[1] "Stip." refers to the basic stipulation of facts (R. 16–35) which as noted above, is identical with the court's findings (R. 56–73). The number refers to the pertinent paragraph of the stipulation.

Stip. 32). In August 1958, Singer set one cent a pound as the top price any peddler would pay for restaurant grease, a substantial reduction of the prevailing price (R. 27, Stip. 45), and a "policing" committee of three grease peddlers was appointed (*ibid.*). In September 1958, processors asked the "committee" to reduce the price to be paid by processors to peddlers; it refused, but after an appeal to Singer, he decided that this price was to be reduced by ¾ cent per pound (R. 28, Stip. 49–50). Prices paid by processors were accordingly reduced, and continued at the reduced rate (*ibid.*). At the same meeting Singer overruled objections by some peddlers to the one cent per pound limit on prices to be paid restaurants (R. 29, Stip. 51).

Under instruction from Singer, during the entire period from October 1954 to May 1959, the grease peddlers agreed to refrain from buying from, or soliciting the accounts of other peddlers (R. 24, Stip. 33). In the case of disputes, Singer allocated accounts and territories (R. 24, Stip. 34, 35); in the case of violation, peddlers were fined or suspended, and if suspended, were prohibited and prevented from selling grease to processors (*ibid.*).

The business of the processors was also allocated. Star (owned by a Union member) (R. 33, Stip. 69) became a processor in July 1958, took customers from processor B & H, and drove up the processors' buying prices (R. 27, Stip. 44). In August, Singer cut those prices back down, and instructed the peddlers to stop selling to Peterson, another processor (R. 27, Stip. 45). When most of the peddlers transferred

their business from Peterson to Washington. Still another processor, rather than to Star, the latter appealed to Singer and the Union to have more peddlers sell to Star (R. 28, Stip. 47). During the same period Singer asked processor B & H to sell 80,000 pounds of grease for Star, which was having trouble selling (R. 28, Stip. 48); B & H paid part of the cost of a trip to Hawaii which Star's owner made to appeal to Singer to reduce prices paid by processors to the peddlers (R. 28, Stip. 49); and Singer represented Star at a meeting he called to split the peddlers' business evenly among B & H, Washington, and Star—by transferring accounts from B & H and Washington to Star, which had been in business less than 3½ months (R. 29, Stip. 53, 54). The peddlers switched to Star upon instruction of the Union "committee" (R. 30, Stip. 55).

B. *Relationship of the grease peddlers to Local 626.*

1. Most of the grease peddlers joined the Union because it offered a means of fixing prices and allocating business; others were forced in. From the beginning the Union's plan included "fore[ing] out of business" all who did not join the Union (R. 22, Stip. 26), and "everyone would have to go along or be put out of business by the Union" (R. 23, Stip. 27). In October 1954, a majority of the grease peddlers joined the Union and agreed to the program as outlined (R. 23, Stip. 28). At about the same time, upon advice from Singer that processors who purchased from non-Union peddlers were to be boycotted and picketed, two processors agreed that they would not purchase grease from non-Union peddlers (R. 23, Stip. 29), thereby setting into motion the contemplated coercion of ped-

dlers into Union membership. In February 1955, under pressure of a strike and picket line, a third processor agreed to purchase no more grease from non-Union peddlers (R. 25–26, Stip. 37). In March 1955, Schrader, a processor of fish oils, in response to a threat of "union trouble," complied with a demand to stop buying grease from two non-Union peddlers (R. 25, Stip. 38). Galerkin, a non-Union peddler, joined the Union so that he would have the opportunity to sell to processors (R. 25–26, Stip. 39). In November 1955, and January 1956, respectively, picket lines were established around two more processors who were then purchasing from non-Union peddlers (R. 26, Stip. 40, 41). When one processor bought grease from non-Union peddlers in February 1959, the Union arranged to have the trucks of the non-Union peddlers trailed, and the non-Union peddlers were subjected to harassment and threats of physical injury (R. 30–31, Stip. 58).

2. The record showed no joint activities and only the most superficial relationship between the grease peddlers (Local 626–B) and the employees' union (Local 626). From October 1954 to May 27, 1959 (when the complaint was filed), there were about 35 to 45 grease peddlers in the Union, Local 626, which comprised some 2,400 members, mostly truck drivers (R. 17, Stip. 1). From April 1955 the grease peddlers held their membership in a "subdivision" of the Union—Local 626–B (*ibid.*). During the entire period from October 1954 to May 1959, they "were established and recognized by defendant Union as a group or segment separate and distinct from

employee members"; and their meetings, although called by defendant Singer or a Union officer, were always held separately from meetings of employee members (R. 23, Stip. 30). Singer, a Union business representative, was "assigned" by the Union "to work with and to conduct the affairs of the grease peddler segment" (R. 24, Stip. 31). Aside from Singer, its affairs were conducted by a committee comprised of grease peddlers[2] appointed in August 1958 to assist in "policing, enforcing and carrying out the program to suppress and eliminate competition" (R. 27, Stip. 45).

C. *Independence of the grease peddlers.*

1. The grease peddlers were stipulated to be independent businessmen: not employees (R. 17, Stip. 5). While their only "skill or special qualifications" were "the ability to load, unload and drive a truck" (R. 17–18, Stip. 6), they rented or owned their own trucks (R. 17, Stip. 5), and bought and sold restaurant grease solely for their own accounts (*ibid.*). They bought primarily from smaller restaurants, hotels and institutions, driving from place to place, buying small amounts in cans and selling the day's collection to a processor (R. 17–18, 19–20, Stip. 5, 6, 7, 16).

Their gross incomes were "the difference between the buy and sell price," and they bore the cost of owning or renting a truck, the cost of employing "an occasional loader," and the cost of "maintaining and operating" the truck (R. 17–18, Stip. 6).

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[2] Defendants Taylor, Brandt and Klein (Klein was replaced by defendant Carlis early in 1959) (R. 27, Stip. 45).

There was no evidence that the peddlers were in any way subject to the control of the processors—either as to routes, territories, customers, prices, or hours, or that there was any financial control, through indebtedness or otherwise.

2. There was no evidence that there was any past or threatened effect upon wages or working conditions of employee-truck drivers as a result of the grease peddlers' activities. Certain of the processors purchased some of their supply of grease directly from hotels, restaurants and institutions while acquiring meat waste and packing and poultry house by-products. In making such purchases these processors used employee-truck driver members of Local 626 to pick up and transport the grease (R. 19–20, Stip. 14–16). The peddlers and the direct buying processors had different sources of supply and different classes of customers. Thus, the peddlers acquired grease from the smaller establishments where the supply was relatively small or irregular in availability. When buying directly, the processors made collections from larger establishments (R. 20, Stip. 16). For the most part, the peddlers dealt with processors whose sole business was the reduction of restaurant grease, for resale (R. 18–19, Stip. 10–15). In 1958, four such processors produced 82 percent of the yellow grease in the area (R. 5, Comp. ¶20; R. 34), and they bought 80 percent of their restaurant grease from peddlers (R. 6, Comp. ¶23; R. 34). The processors who purchased grease from restaurants directly, and had done so for many years, engaged in other activities besides grease processing (R. 19–

20, Stip. 15–16); as noted, their employee-drivers collected several products including grease (R. 19–20, Stip. 16).

The record contains no indication of any economic interrelation between employee-truck drivers and the peddlers. Indeed, prices of yellow grease fell during 1952 to 1954 to less than half their earlier level, and this caused "intensive competition" among the peddlers (R. 22, Stip. 25), but no evidence was offered to show that this had any effect whatever upon the employee-drivers of any of the processors.

Appellants offered no evidence to show the gross or net earnings of the peddlers or the hours they worked, or that employee-truck drivers feared or had reason to fear for their own wages or working conditions as a result of the grease peddlers. It was stipulated that no processors had ever used or threatened to use peddlers as strikebreakers (R. 32, Stip. 65); and that no processor had ever substituted peddlers for employee-drivers in acquiring restaurant grease, or threatened to do so (R. 32, Stip. 66).[3]

In sum, all of the evidence was consistent with the statement of defendant Singer that the purpose of the Union was to improve the lot of "peddlers and the processors buying from peddlers" (R. 27–28, Stip. 46).

D. *Use of the Union as an instrument of the conspiracy, and the appellants' proclivities.*

1. Stipulated facts showed that the appellants used the Union ruthlessly and often in devious ways

[3] Compare the original contentions of appellants, footnote 8, p. 28, *infra*.

to restrain trade, and they had not abandoned their objectives even after the present case was filed. From the first they planned to force out of business any peddler who refused to join with them (R. 22, 23, Stip. 26, 27). A processor was driven out of business because Singer "did not want [the processor] in the grease business" (R. 26, Stip. 42); processors were "asked" to pay an initiation fee for a peddler (R. 25–26, Stip. 39), and to "lend" money to a poor credit risk who was joining the Union 626–B (R. 26–27, Stip. 43); Singer both arranged to sell grease for one of the processors, and arranged to get him one-third of the peddlers' product (R. 29, Stip. 54; R. 28, Stip. 48); peddlers were "suspended" for soliciting other peddlers' accounts, or for paying more than one cent a pound to restaurants—which meant they were out of business during the "suspension" (R. 30, Stip. 56); a strike was called against a processor on trumped-up grounds (R. 30–31, Stip. 58, 59, 60); "non-union" peddlers were followed and subjected to "harassment and threats of physical injury" (R. 30–31, Stip. 58).

The filing of a companion indictment * to this action brought threats against a processor who had testified about the activities of Local 626–B before a Senate Committee (R. 31, 32, Stip. 61, 62, 63). A trade association (Los Angeles Grease Buyers Association) was dissolved because it could not provide the means of doing "for the peddlers what the Union could do,"

* On the date the complaint was filed, a companion criminal indictment was brought against the same defendants (with the exception of Carlis) who thereafter pleaded *nolo contendere* (R. 31, 32, Stip. 61, 64).

without fear of legal prosecution (R. 24–25, Stip. 36). Finally, the stipulation (R. 34) admitted the charge in the complaint that the defendants conspired "[t]o conceal and suppress evidence of the conspiracy alleged by pressure or threats or other means" (R. 9; Comp. 27k).

2. The grease peddlers were able to employ weapons not ordinarily available to a trade association, because of their union affiliation: they called "strikes" (R. 25, Stip. 37; R. 26, Stip. 40; R. 31, Stip. 59), "picketed" (*ibid.* and R. 26, Stip. 41) and otherwise utilized their apparent affiliation with the labor movement to threaten "union trouble" (R. 25, Stip. 38), "labor trouble" (R. 30, Stip. 57) and trouble with "other unions" (R. 32, Stip. 62, 63).

The relationship provided financial strength ("plenty of money," R. 29, Stip. 51), an opportunity to bring pressure on a processor through other business relationships (R. 26, Stip. 42) and a chance to claim a processor had no "labor contract" and thus to conceal the real purpose of a "strike" (R. 31, Stip. 60).

After the filing of the present case, the Union submitted to the trial court in the companion criminal case (in connection with sentencing), statements signed by numerous peddlers in 626–B "stating their conviction that it is desirable and necessary for the peddlers to have an organization to regulate the activities of the peddlers, including prevention of theft of grease and paying too much for restaurant grease. * * *. [and] that *defendant Union is the only organ-*

ization capable of accomplishing these results for them" (R. 32–33, Stip. 67) (emphasis supplied).

III. THE OPINION OF THE DISTRICT COURT

The district court rejected as "pointless" appellants' argument that mere membership of peddlers in the Union "does not transform the union into an illegal combination;" in view of the specific admission that the grease peddlers and the union had "unlawfully combined and conspired" in violation of the Sherman Act (R. 43). The court held (R. 44) that the issue was not whether independent contractors "can join, or properly be coerced to join, a union" as "impliedly sanction[ed]" by *Bakery Drivers' Local* v. *Wohl*, 315 U.S. 769, and *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91. It found that the circumstances of the case disclosed a misalliance between business and labor in restraint of trade like those in *Allen Bradley Co.* v. *Local Union No. 3*, 325 U.S. 797; *Columbia River Packers Ass'n* v. *Hinton*, 315 U.S. 143; and *United States* v. *Fish Smokers Trade Council, Inc.*, 183 F. Supp. 227 (S.D.N.Y.). The court stated (R. 47–48) that the key distinction between the above groups of cases is whether "the purpose of the membership is to secure better wages and working conditions for all union members" or, as the district court in the *Fish Smokers'* case said, "a conspiracy masquerading as a labor agreement in order to restrain competition" (183 F. Supp. at 234). Having found from the admitted facts that there was "no competition between [the grease peddler and

employee driver] groups because each is engaged in a different line of work" (R. 45; see R. 44, 48); that the peddlers were "not a labor group" and "not the proper subject of unionization" (R. 48); that the purpose of taking the peddlers into the Union was to raise the peddlers' income and to permit the Union, the peddlers and the processors "to put together a combination to control the business of buying and selling waste grease" (R. 48); and that there were no "labor disputes", the court below concluded that neither Section 6 of the Clayton Act, nor Section 4(b) of the Norris-La Guardia Act precluded the issuance of an injunction requiring the Union to expel the grease peddlers (R. 48–51).

Upon the further findings that "only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition," and that, as in *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, "[t]he proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future," the court concluded that a decree terminating grease peddler membership in the Union "appears to be the most effective, if not the only, means of preventing a recurrence of defendants' unlawful activities" (R. 55).

SUMMARY OF ARGUMENT

Looking to realities rather than form, Local 626–B is a trade association of independent businessmen. Under familiar principles of equity, the court had power to dissolve this association, for it was created

for illegal purposes, it employed coercion to bring members into the combination, it displayed proclivities for evading the normal processes of the law, and its businessmen members continued to regard it as a means to unlawful ends even after this suit was brought.

The fact that 626–B was part of a trade union, Local 626, does not alter the power of the court to order its dissolution. The presence of the independent businessmen in the Union flowed not from a legitimate desire to better or protect the working conditions of the Union's employee-driver members, but was rather a necessary part of the illegal conspiracy to better the conditions of the businessmen-peddlers and some of the processors. By the same token, there was no trade union interest protected by the labor laws which could even arguably overcome the district court finding that disassociation was necessary to effect compliance with the Sherman Act. Neither the Clayton Act, the Norris-LaGuardia Act, nor the National Labor Relations Act insulates a trade association which combines with and within a labor union to restrain trade from the equity court's accepted power to dissolve an illegal combination. Nor does the First Amendment justify the continued existence of an unlawful combination created for purposes which violate the antitrust laws and held together by unlawful coercion.

There is no need for further hearings before the district court to consider the interests of peddlers who were not parties to the case. The court's order requiring the Union to expel its businessmen-

peddlers from membership was issued after affording all interested parties a full hearing. The non-defendant peddlers were represented by the Union which vigorously contended for their rights of membership. In any event, the order for dissolution of the combination accords with the frequent practice in antitrust cases where the court may formulate relief broad enough to prevent the offenders from violating the Act even though the order affects the rights of persons not made parties to the suit. See *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 365.

ARGUMENT

The record reveals a combination of businessmen (grease peddlers) calling itself "Local 626–B," acting together with the Union (Local 626) and the grease processors, for the purpose of fixing prices of waste grease and allocating the business, concededly in violation of Section 1 of the Sherman Act. The conspiracy rested upon a scheme to persuade some, and to force other, independent businessmen into Union membership. Once in, they became a separately-operated subdivision of the Union, and pursued the plan to restrain trade, deriving from association with the 2400-man Union Local the power to call a dissenter anti-Union, to threaten "Union trouble" and to misuse labor's traditional weapons, strikes and picketing, in execution of the conspiracy.

It is conceded that neither the Norris-La Guardia Act, the Clayton Act, nor any other of the laws dealing with organized labor precludes the issuance of an

injunction enjoining the combination from continuing to restrain trade. Moreover, it is clear that a court in appropriate circumstances may order the dissolution of a trade association of businessmen where the association and its members have combined to violate the antitrust laws. The narrow question presented here is whether the same combination of businessmen may be dissolved where it takes the form of a subdivision of a labor union local and where the court finds that the businessmen and the union's employees do "not compete with each other"; and that the businessmen were taken into the union "for the purpose of raising their income and enabling the Union * * * and the [businessmen] to put together a combination * * * restraining foreign commerce * * * in violation of the Sherman Act" (R. 48).[5] We submit that under the circumstances the court acted within its power in dissolving the ties which bound these businessmen together, and which also bound them to the Union, when it concluded there would be no other effective way of bringing to an end the restraints upon trade. Neither the labor laws nor the First Amendment precludes a court of equity from enjoining continuation of this misalliance which has been

[5] We emphasize that the narrow question presented on the record of this case is to be distinguished from the more difficult questions which would be raised by a court order requiring termination of union membership under other circumstances: for example, where violators of the antitrust laws are independent contractor members who were in competition with other union members (see R. 44). And no challenge is presented here to the right of the Union to retain or admit employee members, under any circumstances.

both the combination itself and its major instrumentality.

A. *Under familiar principles of antitrust law the court properly ordered the Union to expel the peddler members.*

Local 626-B is an association of independent businessmen (R. 16, 17, Stip. 5). It has always met separately and apart from Local 626 (R. 23-24, Stip. 30). Its activities—price fixing and allocation of markets—are those indigenous to an unlawful association of businessmen rather than a labor union, and there is no evidence it makes any useful contribution to the trade-union movement.

Local 626-B was formed in response to a need for a device to give a color of legality to a scheme to fix prices and divide up the business. Those peddlers who did not willingly accede to the scheme were to be forced into the combination (Statement, *supra*, pp. 7-8). Its conduct was ruthless, and marked by misrepresentation, threats of physical violence, defiance of the processes of law and order, and concealment of evidence (Statement, *supra*, pp. 11-13). Even after this case was brought, the peddler members looked upon the Union as the necessary means to "regulate" their activities—including "paying too much for restaurant grease" (R. 33, Stip. 67). It was because of these repeated illegal acts that the court below found it necessary to include in the decree a provision designed to break up this illegal combination. As this court has said, "[t]he pattern of past conduct is not easily forsaken. Where the

proclivity for unlawful activity has been as manifest as here, the decree should operate as an effective deterrent to a repetition of the unlawful conduct." *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 186.

The stipulated facts in this case provide ample grounds for exercise of the power of the court to decree dissolution of an illegal combination. They make the need for such relief clear, and the court had both the power and the duty to shape a decree that would be effective to prevent continued and future violations of the law. *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 88. This Court has many times upheld exercise of this power to dissolve companies found to have monopolized interstate commerce (*International Boxing Club* v. *United States*, 358 U.S. 242, 253; *United States* v. *Standard Oil Co.*, 221 U.S. 1; *United States* v. *American Tobacco Co.*, 221 U.S. 106); to divest or divorce segments of a business where operation had resulted in monopolization or restraint of trade (*United States* v. *du Pont & Co.*, 366 U.S. 316; *United States* v. *National Lead Co.*, 332 U.S. 319; *United States* v. *Paramount Pictures*, 334 U.S. 131); to prohibit the voting of stock acquired pursuant to a conspiracy in restraint of trade (*Northern Securities Co.* v. *United States*, 193 U.S. 197); and to prohibit individuals from being officers of competing corporations (*United States* v. *Crescent Amusement Co.*, 323 U.S. 173).

Indeed, it is well accepted that a court of equity has power to order the dissolution of an unincorporated association formed or used as a combination in re-

straint of interstate commerce. Such orders have been frequently directed against trade associations. See *Hartford-Empire Company* v. *United States*, 323 U.S. 386, 428, and the final decrees in *United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290 (final decree printed in 1 Decrees and Judgments in Civil Federal Anti-Trust Cases 6); *United States* v. *Nome Retail Grocerymen's Ass'n*, 1 Degrees and Judgments in Civil Federal Anti-Trust Cases 83; *United States* v. *United Liquor Corp.*, 149 F. Supp. 609 (W.D. Tenn.), affirmed, 352 U.S. 991 (final decree reprinted in Jur. St. No. 637, O.T. 1956, see p. 23a, par. VII). The substantial number of consent decrees dissolving associations of businessmen further demonstrates that the court's power to order such relief is well recognized.[6]

In the *Hartford-Empire* case, this Court ordered dissolution of an association, and enjoined formation of "any such trade association" except on a showing after a five-year period that its purposes and activi-

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[6] There are 24 consent decrees calling for dissolution of trade associations listed in 4 Decrees and Judgments in Civil Federal Anti-Trust Cases p. V–VII, which cover the period from July 2, 1890 through January 1, 1949. There are 17 additional consent decrees ordering dissolution of trade associations listed in CCH Trade Regul. Repr., ¶ 82,784, 16 of which were entered since 1952.

Other consent decrees in which unincorporated associations have been ordered dissolved include *United States* v. *Stern*, 1952 Trade Cases ¶ 67,319 (a partnership), *United States* v. *Barbers' Supply Dealers Ass'n*, 2 Decrees and Judgments in Civil Federal Anti-Trust Cases 983 ("neighborhood clubs"), and *United States* v. *Electrical Apparatus Export Ass'n*, 4 Decrees and Judgments in Civil Federal Anti-Trust Cases 5049 (a Webb-Pomerene association).

ties would not violate the law. The lower court had severely limited the association's activities, but this Court went further and directed that it be dissolved. The Court stated (323 U.S. 386 at 428):

> We think the injunction as respects the association, while leaving it in existence, practically destroys its functioning, even as an innocent trade association for what would have been held lawful ends. The association has undoubtedly been an important instrument of restraint and monopoly. It may be made such again, and detection and prevention and punishment for such resumptions of violations of law may be difficult if not impossible. In light of the record, we think it better to order its dissolution * * *.

The fact that an association of peddlers, indistinguishable in purpose and actual operation from a traditional trade association, calls itself a "labor union" and becomes in form a subdivision of a local union does not bar the granting of the necessary relief of dissolution of the combination. In antitrust cases courts are guided by economic reality "without regard to the garb in which * * * acts were clothed," and must guard against the "possibility of frustrating that policy by resorting to any disguise or subterfuge of form." *United States* v. *American Tobacco Co.*, 221 U.S. 106, 181; see *American Tobacco Co.* v. *United States*, 328 U.S. 781, 809; *Timken Roller Bearing Co.* v. *United States*, 341 U.S. 593, 598.

Moreover, the alliance of the grease peddlers (Local 626–B) with the Union (Local 626) emphasizes the

need for the relief decreed by the court. As the district court found, the proclivities of the defendants require that the power of such an alliance be placed beyond their reach (R. 55). The grease peddlers misused their "union" status, through "strikes," picketing, sham claims of no "labor contract," and threats of "labor trouble" or "union trouble," to carry out their unlawful conspiracy (Statement, *supra*, pp. 13–14). As the district court noted, "only the support of the Union and the powerful weapons at its command enabled the peddlers and the Union together to destroy free competition in the purchase and sale of waste grease, and to drive several processors out of business" (R. 55). At the time of the hearing below, there were only two processors left in the Los Angeles area who bought regularly from peddlers; one is owned by a member of Local 626, and a partner in the other belongs to Local 626; and both have confined their purchases to "Union" peddlers (R. 33, Stip. 69, 70, 71).

The decision of this Court in *Allen Bradley v. Local Union No. 3*, 325 U.S. 797, emphasizes the need for the separation of the grease peddlers from the Union. The Court there said (*id.* at 810):

> Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups. * * *

The district court had authority to order the Union to expel the businessmen-peddlers and, in the light of the record in this case, was fully warranted in con-

cluding that this was the only effective method of terminating the illegal practices and preventing their recurrence.

B. *The Court's order was not precluded by the policies of the labor laws, or by the First Amendment.*

1. The Norris-La Guardia Act, 29 U.S.C. 104, does not prohibit the relief decreed below. That Act applies only to cases "involving or growing out of any labor dispute." This case did not grow out of a labor dispute. *Columbia River Packers Ass'n v. Hinton*, 315 U.S. 143, is directly in point. There an association of fishermen, operating under the guise of a labor union, boycotted a processor for refusing to agree to buy fish exclusively from union fishermen. This Court held Norris-La Guardia inapplicable, saying (at p. 145):

> That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a "controversy concerning terms or conditions of employment, or concerning the association * * * of persons * * * seeking to arrange terms or conditions of employment" calls for no extended discussion. This definition and the stated public policy of the Act—aid to "the individual unorganized worker * * * commonly helpless * * * to obtain acceptable terms and conditions of employment"; and protection of the worker "from the interference, restraint or coercion of employers of labor"—make it clear that the attention of Congress was focused upon disputes affecting the employer-employee relationship, and that

> the [Norris-La Guardia] Act was not intended to have application to disputes over the sale of commodities.

See *American Medical Ass'n* v. *United States*, 317 U.S. 519, 533-536; *Bakery Drivers Union* v. *Wagshal*, 333 U.S. 437, 443; *United States* v. *Women's Sportswear Ass'n*, 336 U.S. 460, 463-464.

Indeed, appellants' concession that an injunction could properly issue in this case (R. 34) points up the inapplicability of the Norris-La Guardia Act as a bar to expulsion of the businessmen.

2. Appellants' argument derives no support from the labor exemptions of the Clayton Act, Sections 6 and 20, 15 U.S.C. 17 and 29 U.S.C. 52. The object of these provisions is to protect the rights of employees to organize for mutual help. This Court has emphasized the distinction between employees and independent entrepreneurs, and made it clear that no labor law policy or statute immunizes combinations of businessmen and unions which seek to restrain trade. *Columbia River Packers Ass'n, Inc.* v. *Hinton*, *supra*, 315 U.S. 143; *Allen-Bradley Co.* v. *Local Union No. 3*, *supra*, 325 U.S. 797. The only effect of the court's order is to require the Union to expel the businessmen from membership.

3. There is no basis for appellants' reliance upon the proviso of Section 8(b)(1) of the National Labor Relations Act, 29 U.S.C. 158(b)(1), "That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." This section is not relevant to the problem facing the

court, for it merely qualifies the limitations which that Act places upon union restraint or coercion of employees. The general legal right of the union to determine its own membership is not challenged here; and in any event no doctrine of common law or statute gives a union the right to serve as the nexus of an association of businessmen beyond reach of an equity court. *Giboney* v. *Empire Storage and Ice Co.*, 336 U.S. 490, discussed *infra*, pp. 30-31.

It is also clear that Congress did nothing to change the law in this regard in the Labor-Management Reporting and Disclosure Act, 73 Stat. 519, 29 U.S.C. (Supp. II) 401. No underlying right was broadened by Congress' failure to change the proviso in 8(b)(1); nor does this congressional inaction demonstrate any purpose to limit the power of an equity court, as the appellants suggest (Br. 11).

The National Labor Relations Act recognizes that independent businessmen, no matter how small, are not to be treated indiscriminately as a single group with employees, and this is entirely consistent with the declaration in Section 1 (29 U.S.C. 151) that it is the policy of the United States to protect "the exercise by worker of full freedom of association, [and] self-organization * * *." That declaration is keyed to references to the "right of *employees* to organize," and its stated objective is to restore "equality of bargaining power between employers and employees" (*ibid.*) (emphasis supplied). To this end, Section 7, 29 U.S.C. 157, guarantees to *employees* "the right to self-organization, to form, join, or assist labor organizations," defining "employees" so as to exclude in-

dependent contractors, Section 2(3), 29 U.S.C. 152(3).

Moreover, Section 8(b)(4)(A) makes it an unfair labor practice to force or coerce any self-employed person to join any labor organization. While we recognize that independent entrepreneurs have the right to join labor unions, we contend that this right is not of such character as to be beyond reach of an equity court decree awarding necessary relief in an antitrust case. In this connection it is significant that where the labor laws speak of independent contractors they are oriented towards protecting independent contractors *from* unions rather than towards promoting alliances of the type now before the Court.

4. Appellants virtually concede (Br. 13) that there is no basis in the record for their argument (Br. 12-17) that the Union has a "necessary interest in maintaining industry standards [which] sanctions the membership of owner-driver peddlers." Instead, they rely on other cases in which the activities of independent businessmen were found to have affected the economic interests of employee members who performed similar job functions.[7] However, those cases

[7] Cases such as *Local 24* v. *Oliver*, 358 U.S. 283; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U.S. 91, and *Bakery & Pastry Drivers* v. *Wohl*, 315 U.S. 769, are not relevant here. For this Court has never held, in these cases or any other, that independent businessmen may, with impunity from Sherman Act sanctions, join with a labor union to fix prices or allocate markets on goods in commerce even though (1) the businessmen perform economic functions similar to the union's employee members and (2) the union sought a legitimate labor objective. Cf. *Allen Bradley Co.* v. *Local Union No. 3*, *supra*; *United Brotherhood of Carpenters* v. *United States*, 330 U.S. 395, and *United States* v. *Women's Sportswear*

do not rely, as petitioners must, on general and unsupported presumptions drawn from industrial history or industrial life (Br. 13). In each there were facts, not present or even alleged here,[8]

Ass'n, 336 U.S. 640. In any event *Lake Valley and Bakery Drivers* were cases in which so-called "vendors" were being utilized to supplant union employee-drivers, or to threaten such action, and *Oliver* involved a long history demonstrating that the owner-drivers' rental rates were "integral * * * to the establishment of a stable wage structure." *United States v. Drum*, 368 U.S. 370, 382-383, note 26.

[8] At the outset of this case, the appellants offered to prove a fact background comparable to the showing in *Local 24 v. Oliver*, *supra*, but the claim was apparently abandoned. Compare the Stipulation (R. 32-33, Stip. 65, 66, 67), with the following from "*Defendants' Memorandum of Contentions of Fact and Law*", pages 3-4, filed with the court below on December 12, 1960:

"8. For many years the Union has negotiated collective bargaining agreements with the processors covering, in detail, wages, hours, overtime rates, holiday pay, vacations, health and welfare contributions and similar benefits as the collective bargaining agent of their employee-drivers and inside workers. In the course of the negotiation of these successive labor agreements, the processors have threatened to expand the "peddler system" for the collection of waste grease and other meat by-products in order to reduce the Union's wage and other demands, to have available a ready source of strikebreakers if the Union struck in support of its demands and to replace employee-drivers. On occasion, processors have threatened to convert their employee-drivers into peddlers by making a fictitious transfer to them of title to trucks and thereafter to base their earnings upon an employer dictated "sale" price of the grease collected and delivered by them.

"9. Beginning in 1934 and continuing thereafter, the Union actively organized the grease peddlers into union membership and adopted union membership provisions applicable to their operations designed to prevent such peddlers from undermining employee wages and working

which showed the existence of job or wage competition between the businessmen and the employee members. Apellants' argument must fail for neither these cases nor any other decisions or statutes establish a conclusive presumption that there is a Union interest in any case in which businessmen and Union members perform similar physical functions.

At bottom, appellants rely upon an "assault" which the owner-driver peddler system has made over the past 25 years on conditions of employment in the transportation and service trades in other industries and in other parts of the country. But this cannot displace the present record which shows no such conflict in this industry in this area of the country—past, present, or future (see Statement, *supra*, pp. 10–11). We emphasize that the record before the lower court was submitted and prepared by both parties to present the facts deemed relevant to the issue now on review. The facts are not in dispute. Among the record facts, all that appellants point to is that (a) each of the eight processors employs union members (in unspecified capacities), and (b) four of the eight processors employ Union drivers to transport grease from restaurants to the processors' plants (Br. 13). This is no evidence at all to combat the court's holding—unchallenged here—that there was no "competition" of the type suggested (R. 45), and that the Union interest in the peddlers was in no way con-

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conditions, from acting as strikebreakers, and from diminishing the employee-members' employment opportunities."

All these claims are either omitted from, or contrary to, the Stipulation, *supra*.

nected with the wages or working conditions of Union employees (R. 44, 45, 47, 48).[9] This holding rests on findings that the peddlers and employee members collected grease from different sources and served the needs of different groups of processors. It was based further on stipulated facts that at no time had any processors taken action or threatened to take action to make use of peddlers for strike-breaking purposes or to substitute peddlers for driver-employees in the acquisition of grease. See Statement, *supra*, pp. 10–11.

5. Appellants' argument that the decree contravenes the First Amendment in that it restricts freedom of assembly is answered by this Court's decision in *Giboney* v. *Empire Storage and Ice Co.*, 336 U.S. 490. There it was held that the right to picket peacefully, equally protected by the First Amendment, was no bar to a state court injunction against picketing Empire to force it to stop selling ice to peddlers and thereby to force Empire into a combination in restraint of trade. The Court pointed out that the appellants' union activities, including the picketing, "constituted a single and integrated course of conduct, which was in violation" of the State law (*id.* at 498). The Court rejected the contention "that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part

[9] Should these circumstances change, an equity decree is a continuing decree subject to modification, even in the absence of specific reservation, "by force inherent in the jurisdiction of the chancery." *United States* v. *Swift & Co.*, 286 U.S. 106, 114; *Donaldson* v. *Read Magazine*, 333 U.S. 178, 184; and see *United States* v. *Fallbrook Public Utility District*, 193 F. Supp. 342 (S.D. Cal.).

of conduct in violation of a valid criminal statute" (*ibid.*). Surely freedom of assembly gives businessmen no greater right to join something called a "union" than to join a combination called a trade association.

In the present case it is clear that the peddlers used their status in the Union local both as the means of forcing dissident peddlers and processors into the conspiracy and as the means of achieving their unlawful objectives of enabling the Union, peddlers and processors to control the business of purchasing and selling waste grease in the Los Angeles area. In view of the demonstrated proclivities of the appellants, and their acknowledgement of the Union's unique advantages in the peddlers' continuing quest for price fixing, the court's decree did not infringe any rights protected by the First Amendment.

C. *The decree properly directed the Union to expel its peddler members even though all such members were not parties to the suit.*

Finally, appellants contend (Br. 19–20) that, apart from the propriety of ordering the union to expel the peddlers, the court had no authority to require the expulsion of those peddler members who were not parties to the case. The argument is that each peddler has a "separate and distinct statutory and contractual interest in his own membership" which, consistently with due process, may not be terminated "absent a full and fair hearing" (Br. 19). Appellants urge that since only four of the 35–45 peddler members were made parties defendant, the case should be remanded "for the purpose of according a hear-

ing to those against whom the judgment was issued" (Br. 20).

The short answer to this contention is that the judgment directing expulsion of the peddlers runs only against the Union, and that this order was entered after a "full and fair hearing" in which the Union had full opportunity to, and did, present all its arguments against the order. There is no claim that the interests of the non-defendant peddler members were in conflict with those of the Union or the four members who were made parties, or that the Union inadequately represented its members' interests in resisting the order. None of the other peddler members sought to intervene before the district court on the ground that the Union was not properly representing them (see *Sam Fox Publishing Co.* v. *United States*, 366 U.S. 683, 692). Under these circumstances the district court properly concluded that "the interested parties (Local Union 626, including its grease peddler members)" had been given "a full hearing" (R. 52).

It seems somewhat anomalous, to say the least, for the Union, after having vigorously contended for the membership rights of all its peddlers, now to urge that their interests were inadequately represented. If, in fact, the members were not represented by the Union, then the Union has no standing here to rely on the deprivation of rights of third parties as grounds for reversal of the order issued only against the Union. *United States* v. *Raines*, 362 U.S. 17, *Tileston* v. *Ullman*, 318 U.S. 44; *Tyler* v.

Judges of the Court of Registration, 179 U.S. 405; compare *Barrows* v. *Jackson*, 346 U.S. 249.

In any event, the scope of the decree is within the recognized power of an equity court to enforce the public interest in proceedings under both the antitrust laws and other statutes. Decrees and orders in such proceedings have frequently affected the rights of persons not before the court. See *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 363–366; *United States* v. *National Lead Co.*, 63 F. Supp. 513, 525, fn. 8 (S.D. N.Y.), affirmed, 332 U.S. 319. This Court has ordered dissolution of a trade association even though all of its members were not before the Court (*Hartford-Empire Co.* v. *United States*, 323 U.S. 386), and the Court has struck down contractual arrangements even though the lessees, licensees and other parties to the agreements were not before it (*International Boxing Club* v. *United States*, 358 U.S. 242; *United States* v. *Univis Lens Co.*, 316 U.S. 241; *Ethyl Gasoline Corp.* v. *United States*, 309 U.S. 436; *Interstate Circuit* v. *United States*, 306 U.S. 208; *Paramount Famous Lasky Corporation* v. *United States*, 282 U.S. 30).

In *National Licorice Co.*, the Court upheld the authority of the Board to order an employer not to enforce contracts with its employees, found to have been procured in violation of the National Labor Relations Act, even though the employees were not parties to the proceeding. As here, it had been urged that in the absence of the employees who signed the contract, the Board was powerless to declare it void. In upholding the Board's power, the Court noted that the

order was made to carry out the public purposes of the Act and stated (309 U.S. at 365):

> * * * the order does not go beyond those in suits brought by the United States to restrain violations of the Sherman Act, where the injunction was broad enough to prevent the offender from carrying out contracts with persons not parties to the suit.[10]

Similarly, in the present case, the district court, on finding that the peddler members of the Union had engaged with the Union in a conspiracy to restrain trade, and that the public purpose of the Sherman Act required termination of the relationship, had power to order the necessary relief. As in *National Licorice Co.* and the other cases cited above, the fact that all the members affected by this order were not made parties did not deny to the court the power to enforce the Act.

Further support for this conclusion is found in Rule 65(d) of the Federal Rules of Civil Procedure, which provides that an injunction may bind "the parties to the action, their officers, agents, servants, employees, and attorneys, and * * * those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." This Court has said that the Rule 65(d) "is derived from the common-law doctrine that a degree of

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[10] The Court also noted that in proceedings before the Federal Trade Commission orders restraining unfair methods of competition had precluded the performance of outstanding contracts by the offender even though the holders of those contracts were not made parties. *National Licorice Co.* v. *National Labor Relations Board*, *supra*, at 366.

injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control." *Regal Knitwear Co.* v. *National Labor Relations Board*, 324 U.S. 9, 14.[11] The Court there pointed out that a Board order and a court enforcement order running against "successors and assigns" was permissible to the extent that it reached persons defined in Rule 65(d). We submit that the absent grease peddlers were "identified in interest," in "privity," and "represented" by the Union in the court below, within the meaning of the *Regal* opinion.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted.

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SEPTEMBER 1962.

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[11] And see *In re Lennon*, 166 U.S. 548; *International Brotherhood* v. *Keystone F. Lines*, 123 F. 2d 326 (C.A. 10).

APPENDIX

Sherman Act, Sections 1, 4, 26 Stat. 209, as amended, 15 U.S.C. 1, *et seq.*:

> § 1. *Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty.*
>
> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal * * *
>
> * * * * * * *
>
> § 4. *Jurisdiction of courts; duty of United States attorneys; procedure.*
>
> The several district courts of the United States are invested with jurisdictions to prevent and restrain violations of sections 1–7 of this title; * * *

Clayton Act, Sections 6, 20, 38 Stat. 731, 738, 15 U.S.C. 17, and 28 U.S.C. 52:

> § 6. *Antitrust laws not applicable to labor organizations.*
>
> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conduct for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

§ 20. Statutory restriction of injunctive relief.

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto;

nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Norris-La Guardia Act, Section 4, 47 Stat. 70, 29 U.S.C. 104:

§ 104. *Enumeration of specific acts not subject to restraining orders or injunctions.*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified: and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

National Labor Relations Act, Section 1, 49 Stat. 449, as amended, 29 U.S.C. 151:

§ 151. *Findings and declaration of policy.*

* * * * *

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

National Labor Relations Act, Section 2(3), 49 Stat. 450, as amended, 29 U.S.C. 152(3):

§ 152. *Definitions.*

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, * * * but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, * * *

National Labor Relations Act, Section 7, 49 Stat. 452, as amended, 29 U.S.C. 157:

§ 157. *Right of employees as to organization, collective bargaining, etc.*

* * * * * *

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

National Labor Relations Act, Section 8(b) (1), (4)(A), 49 Stat. 452, as amended by 61 Stat. 140, as amended, 29 U.S.C. 158(b) (1), (Supp. III) (4) (i)(A):

* * * * * *

§ 158. *Unfair labor practices*

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

* * * * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;